

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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In re : Chapter 9
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CITY OF DETROIT, MICHIGAN, : Case No. 13-53846
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Debtor. : Hon. Steven W. Rhodes
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**MOTION OF CREDITORS FOR ADJOURNMENT OF
CONFIRMATION HEARING AND RELIEF FROM SCHEDULING ORDER**

The Creditors¹ hereby submit this motion (the “Motion”) for entry of an order² (i) adjourning the hearing to consider confirmation (the “Confirmation Hearing”) of the Sixth Amended Plan for the Adjustment of Debts of the City of Detroit (August 20, 2014) (as may be amended, the “Plan”), and (ii) granting relief from the *Fifth Amended Order Establishing Procedures, Deadlines and Hearing Dates Relating to the Debtor’s Plan of Adjustment*, dated June 9, 2014 [Docket No. 5259] (the “Fifth Amended Scheduling Order”) so that the Creditors may identify and prepare new expert testimony. In support of this Motion, the Creditors respectfully represent as follows:

¹ Financial Guaranty Insurance Company (“FGIC”), Deutsche Bank AG, London, Dexia Crédit Local and Dexia Holdings, Inc., Panning Capital Management, LP, on behalf of funds and accounts managed by it, Monarch Alternative Capital LP, on behalf of funds and accounts managed by it, Bronze Gable, LL.C., Aurelius Capital Management, LP, on behalf of its managed entities, Stone Lion Capital Partners L.P., on behalf of funds and accounts managed by it, and BlueMountain Capital Management, LLC on behalf of funds and accounts managed by it, and the Macomb Interceptor Drain Drainage District (“MIDDD”) join this Motion.

² Pursuant to Rule 9014-1(b)(1) of the Local Rules of the Bankruptcy Court for the Eastern District of Michigan (the “Local Rules”), a copy of the proposed form of order granting this Motion is attached hereto as Exhibit 1.

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Factual Background

2. On September 9, 2014, Syncora Capital Assurance Inc. and Syncora Guarantee Inc. (together, “**Syncora**”) and the City of Detroit (the “**City**”) filed a joint motion announcing they reached an agreement in principle resolving Syncora’s objections to the Plan. (*Joint Motion of Syncora and the City of Detroit for Adjournment of the Hearing*, dated September 9, 2014 [Docket No. 7379] (the “**Joint Motion**”).) The parties described the agreement as one that “will profoundly alter the course of the proceeding and the litigation plans of the remaining parties.” (*Id.*)

3. At the hearing to consider the Joint Motion, counsel for the City confirmed that the terms of the settlement between the City and Syncora, if finalized, will require certain amendments to the Plan, and that the City will file a seventh amended version of the Plan once definitive settlement documentation is complete.

4. The Court granted the Joint Motion, adjourning the Confirmation Hearing until September 15, 2014,³ and confirmed in a dialogue with counsel for FGIC at the hearing on the Joint Motion that any further adjournment would be addressed via motion.

5. Although the City has shared with the Creditors unexecuted term sheets outlining the City’s proposed settlement with Syncora as of September 9, 2014, and the City engaged in discussions with certain of the Creditors to further describe the terms of this proposed

³ *Order Granting Joint Motion for Adjournment*, dated September 10, 2014 [Docket No. 7390] (the “**Adjournment Order**”).

deal, the City has not yet filed executed settlement documents or an amended Plan and disclosure statement.

Relief Requested

6. Pursuant to this Motion, the Creditors seek relief from the current deadlines and dates governing the Plan confirmation proceeding in order to fully and adequately prepare their case.

7. First, because Syncora will no longer be objecting to the Plan, the Creditors require additional time to prepare for examinations of witnesses that are already scheduled. Consistent with the *Order Regarding Deposition Protocol*, dated June 9, 2014 [Docket No. 5263], and in an effort to streamline the confirmation proceedings, Syncora and the Creditors designated in advance lead questioners for the direct and cross examination of witnesses during the confirmation trial.⁴ As of the date of the Adjournment Order, Syncora's counsel was responsible for questioning 11 of the 20 remaining witnesses to be called by the City and other Plan supporters (not including "may call" or rebuttal witnesses), as well as the Court's expert, and Syncora was planning to call and take the direct examination of 10 witnesses in support of the Plan objectors' arguments. As a result of Syncora's settlement with the City, the Creditors must now analyze whether and to what extent to question these 22 witnesses for whom Syncora's counsel was previously responsible, and then prepare for such questioning. Although counsel for the Creditors have worked diligently since the adjournment last week to reorganize their case and determine how to address the remaining witnesses, additional time is necessary to complete this analysis and adequately prepare for trial.

⁴ As the Court may recall, a similar approach was taken by creditors in other proceedings in this case, such as the hearings to consider the City's eligibility for chapter 9 relief and the City's settlement with certain swap counterparties.

8. Second, although the final terms of the City's agreement with Syncora are not yet known, it has become apparent that the Creditors will need to submit expert testimony regarding the value of any new consideration to be provided to Syncora and Class 9. Accordingly, the Creditors seek relief to supplement existing expert reports and/or serve additional expert reports addressing this issue. The Creditors also need additional time to prepare a new expert for testimony.⁵ One of the witnesses Syncora was designated to call in support of the Creditors' objections was Kevin M. Murphy, a professor of economics at The University of Chicago, who issued an expert report and was prepared to testify that neither economic principles nor empirical evidence supports the City's claim that there is a strong link between the performance and morale of current employees and the distribution to be provided to holders of pension claims. The Creditors, who had coordinated with Syncora pretrial to split up the coverage of expert witness testimony, were relying on Mr. Murphy to support their objection to the City's alleged justification for the Plan's preferential treatment of holders of pension claims. In an effort to avoid the delay that would result from having to retain a new expert on this issue, which would involve serving the City and other Plan supporters with a new expert report and making such expert available for deposition, counsel for FGIC sought consent from Syncora and the City to engage Mr. Murphy. Unfortunately, the City refused this request. Therefore, the Creditors must bring in a new expert to provide this important testimony.

9. Based upon the foregoing, the Creditors respectfully request a further adjournment of the Confirmation Hearing for at least (1) week. The Creditors submit this limited and reasonable extension is essential to enable the Creditors to have a full and fair opportunity to

⁵ Pursuant to paragraph 11 of the Fifth Amended Scheduling Order, objecting creditors were required to file a list of expert witnesses and serve copies of expert reports by July 25, 2014.

present their case before this Court. It also may permit the Creditors to streamline their presentation, resulting in a more efficient trial.

10. This reasonable extension also would provide the Creditors with an opportunity to continue analyzing the terms of the City's preliminary deal with Syncora and understand how this agreement (at least as currently structured) impacts the Creditors' rights. As mentioned above, the City advised the Court that its settlement with Syncora will require the City to file a further amended Plan. As an initial matter, the Creditors believe that the amendments will change the distribution scheme under the Plan to favor Syncora over other holders of Class 9 COP Claims in violation of section 1123(a)(4) of the Bankruptcy Code (made applicable in chapter 9 through section 901 of the Bankruptcy Code), as well as provide for further unfair discrimination against Class 14 General Unsecured Creditors, resulting in grounds for additional Creditor objections. Although the Creditors have begun analyzing the rough structure of the deal outlined in the September 9 term sheets provided by the City, those were preliminary proposals that, by their explicit terms, did not purport to include all the terms of any final agreement. Further, as stated in the Joint Motion, since then the City and Syncora have engaged in further discussions to finalize their agreement, which may have resulted in changes to the deal. The Creditors will need time to review whatever final settlement documents are proposed by the City and Syncora, as well as any Plan amendments and revised disclosure statement regarding such settlement, in order to understand the agreement between these parties, analyze its effect on the Creditors, and formulate any objections thereto. Whenever the final documentation is filed, the Creditors will need a reasonable amount of time to review and analyze it, and the Confirmation Hearing should at that time be further adjourned to give the

Creditors an opportunity to submit their supplemental objections in writing.⁶ In the meantime, a week extension now will give the Creditors a head start on this work.

11. Accordingly, the Creditors seek entry of the order attached as **Exhibit 1** (i) adjourning the Confirmation Hearing until September 22, 2014 or such later date as is convenient for the Court, without prejudice to any request for further extensions depending on the timing of the City's filing of definitive settlement and amended Plan documents, and (ii) providing limited relief from the Fifth Amended Scheduling Order for the Creditors to submit certain expert testimony.

Notice

12. Notice of this Motion has been given to all parties registered to receive electronic notices in this matter. The Creditors submit that no other or further notice need be provided.

Statement of Concurrence Sought

13. On September 12, 2014, counsel for the City advised counsel for FGIC that the City would not consent to the relief sought in this Motion.

No Prior Request

14. No prior request for the relief sought herein has been made to this or any other court.

⁶ An adjournment to allow for the submission of supplemental objections would be consistent with this Court's prior practice of refusing to allow a hearing to proceed on a plan of adjustment that has not yet been filed. It also would help mitigate the need to recall certain City witnesses that, if the trial proceeds, may have already testified, to examine them regarding the terms of the City's new deal with Syncora. In addition, depending on the nature and extent of the revisions to the Plan, the Creditors may need to call additional fact and/or expert witnesses and request additional discovery (including potentially depositions) of the City and certain of the Plan supporters. The Creditors will seek further relief from this Court with respect to these issues, if necessary, once the settlement documentation is filed.

WHEREFORE, the Creditors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit 1**, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: September 14, 2014

Respectfully submitted,

/s/ Mark R. James

Ernest J. Essad Jr.
Mark R. James
WILLIAMS, WILLIAMS, RATTNER &
PLUNKETT, P.C.
280 North Old Woodward Avenue, Suite 300
Birmingham, MI 48009
Telephone: (248) 642-0333
Facsimile: (248) 642-0856
Email: EJEssad@wwrplaw.com
Email: mrjames@wwrplaw.com

- and -

Alfredo R. Pérez
WEIL, GOTSHAL & MANGES LLP
700 Louisiana Street, Suite 1700
Houston, TX 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511
Email: alfredo.perez@weil.com

– and –

Edward Soto
WEIL, GOTSHAL & MANGES LLP
1395 Brickell Avenue, Suite 1200
Miami, FL 33131
Telephone: (305) 577-3177
Facsimile: (305) 374-7159
Email: edward.soto@weil.com

*Attorneys for Financial Guaranty Insurance
Company*

/s/ Deborah L. Fish

Deborah L. Fish
ALLARD & FISH, P.C.
2600 Buhl Building
535 Griswold
Detroit, MI 48226
Telephone: (313) 961-6141
Facsimile: (313) 961-6142

- and -

KRAMER LEVIN NAFTALIS
& FRANKEL LLP
Thomas Moers Mayer
Jonathan M. Wagner
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000

*Counsel for Dexia Crédit Local and
Dexia Holdings, Inc., Panning Capital
Management, LP, on behalf of funds and
accounts managed by it, Monarch Alternative
Capital LP, on behalf of funds and accounts
managed by it, Bronze Gable, L.L.C., Aurelius
Capital Management, LP, on behalf of its
managed entities, Stone Lion Capital Partners
L.P., on behalf of funds and accounts managed
by it and BlueMountain Capital Management,
LLC on behalf of funds and accounts managed
by it*

/s/ Kenneth E. Noble

Kenneth E. Noble
John J. Ramirez
KATTEN MUCHIN ROSENMAN LLP
575 Madison Avenue
New York, NY 10022-2585
Tel: (212) 715-9393
E-mail: Kenneth.noble@kattenlaw.com
John. Ramirez@kattenlaw.com

Counsel for Deutsche Bank AG, London

/s/ Allan S. Brilliant

Allan S. Brilliant
Debra D. O'Gorman
Stephen M. Wolpert
DECHEART LLP
1095 Avenue of the Americas
New York, NY 10016
Telephone: (212) 698-3500
Facsimile: (212) 698-3599
allan.brilliant@dechert.com
stephen.wolpert@dechert.com

*Attorneys for Macomb Interceptor Drain
Drainage District*

ATTACHMENTS

Exhibit 1	Proposed Form of Order
Exhibit 2	Notice
Exhibit 3	None [Brief Not Required]
Exhibit 4	Certificate of Service
Exhibit 5	None
Exhibit 6	None [No Documentary Exhibits]

EXHIBIT 1

Proposed Form of Order

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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**ORDER ADJOURNING CONFIRMATION HEARING
AND PROVIDING RELIEF FROM SCHEDULING ORDER**

Upon the motion (the “**Motion**”) of the Creditors¹ for an order adjourning the Confirmation Hearing and granting certain relief from the Fifth Amended Scheduling Order; and the Court having jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the hearing to consider the relief requested therein (the “**Hearing**”) having been given to all parties registered to receive electronic notices in this matter; and the Court having held the Hearing with the appearances of interested parties noted in the record of the Hearing; and upon the entire record of all the proceedings before the Court; and the legal and factual bases set forth in the Motion establishing just and sufficient cause to grant the relief requested therein; and the relief granted herein being in the best interests

¹ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

of the City, its creditors and other parties in interest; and the relief requested herein being necessary, reasonable and appropriate;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Confirmation Hearing is adjourned to September 22, 2014, without prejudice to any party seeking a further adjournment.
3. The Creditors may serve new and/or supplemental expert reports to address (i) the subject matter of the opinions set forth in the Expert Report of Kevin M. Murphy and (ii) the value of the consideration to be provided to Syncora and Class 9 pursuant to Syncora's settlement with the City.
4. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement and/or interpretation of this Order.

EXHIBIT 2

Notice

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
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In re : Chapter 9
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Debtor. : Hon. Steven W. Rhodes
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**NOTICE OF MOTION OF CREDITORS FOR ADJOURNMENT
OF CONFIRMATION HEARING AND RELIEF FROM SCHEDULING ORDER**

The Creditors¹ have filed papers with the Court seeking entry of an order adjourning the hearing to consider confirmation of the City's chapter 9 plan of adjustment and granting certain additional relief from the current deadlines governing the confirmation proceeding (the "Motion").

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, **within fourteen (14) days**, you or your attorney must²:

1. File with the court a written response or an answer, explaining your position at:³

¹ Financial Guaranty Insurance Company ("FGIC"), Deutsche Bank AG, London, Dexia Crédit Local and Dexia Holdings, Inc., Panning Capital Management, LP, on behalf of funds and accounts managed by it, Monarch Alternative Capital LP, on behalf of funds and accounts managed by it, Bronze Gable, LL.C., Aurelius Capital Management, LP, on behalf of its managed entities, Stone Lion Capital Partners L.P., on behalf of funds and accounts managed by it, and BlueMountain Capital Management, LLC on behalf of funds and accounts managed by it, and the Macomb Interceptor Drain Drainage District ("MIDDD") join this Motion.

² Contemporaneously with the filing of the Motion, the Creditors are filing an ex parte motion seeking an expedited hearing on the Motion to be conducted at 8:30 am, Monday, September 15, 2014.

³ Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e).

United States Bankruptcy Court
211 W. Fort Street, Suite 2100
Detroit, Michigan 48266

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

Alfredo R. Pérez
WEIL, GOTSHAL & MANGES LLP
700 Louisiana Street, Suite 1700
Houston, TX 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511

Edward Soto
WEIL, GOTSHAL & MANGES LLP
1395 Brickell Avenue, Suite 1200
Miami, FL 33131
Telephone: (305) 577-3177

Ernest J. Essad Jr.
Mark R. James
WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.
280 North Old Woodward Avenue, Suite 300
Birmingham, MI 48009
Telephone: (248) 642-0333
Facsimile: (248) 642-0856

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

DATED: September 14, 2014

Respectfully submitted,

/s/ Mark R. James

Ernest J. Essad Jr.
Mark R. James
WILLIAMS, WILLIAMS, RATTNER &
PLUNKETT, P.C.
280 North Old Woodward Avenue, Suite 300
Birmingham, MI 48009
Telephone: (248) 642-0333
Facsimile: (248) 642-0856
Email: EJEssad@wwrplaw.com
Email: mrjames@wwrplaw.com

– and –

Alfredo R. Pérez
WEIL, GOTSHAL & MANGES LLP
700 Louisiana Street, Suite 1700
Houston, TX 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511
Email: alfredo.perez@weil.com

– and –

Edward Soto
WEIL, GOTSHAL & MANGES LLP
1395 Brickell Avenue, Suite 1200
Miami, FL 33131
Telephone: (305) 577-3177
Email: edward.soto@weil.com

*Attorneys for Financial Guaranty Insurance
Company*

EXHIBIT 3

None [Brief Not Required]

EXHIBIT 4

Certificate of Service

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2014 the Motion of Creditors for Adjournment of Confirmation Hearing and Relief from Scheduling Order was filed and served via the Court's electronic case filing and noticing system to all parties registered to receive electronic notices in this matter.

Dated: September 14, 2014

/s/ Mark R. James
Mark R. James
Williams, Williams, Rattner & Plunkett, P.C.
380 North Old Woodward Ave., Suite 300
Birmingham, MI 48009
(248) 642-0333
mrj@wwrplaw.com

*Attorney for Financial Guaranty Insurance
Company*

EXHIBIT 5

None

EXHIBIT 6

None [No Documentary Exhibits]